

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Public Safety Communications	)	
in the 800 MHz Band	)	WT Docket No. 02-55
	)	DA 02-2202
Consolidating the 900 MHz Industrial/	)	DA 02-2306
Land Transportation and Business	)	
Pool Channels	)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS OF AMEREN CORPORATION**

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## SUMMARY

With hundreds of comments filed by nearly as many parties, the appearance of a “Consensus Plan” developed by the myriad parties to this proceeding surely should be welcomed by the Commission if, in fact, the proposal represents a fair cross-section of the parties or is, at the least, an effective plan. Unfortunately, the Consensus Plan is neither.

Numerous parties, including water, gas, and electric utilities, never were invited to take part in the drafting of a plan to relieve interference problems in the 800 MHz band, despite the fact that these parties possess thousands of licenses in the band and are, in addition to public safety entities, some of the most harmed by such interference. Not surprisingly, and either the cause for utilities not being invited, or the result of the lack of their input, the resulting Consensus Plan requires utilities and other B/ILT licensees to help alleviate the interference problems in the 800 MHz band that they did not cause by forcing them to reband or relocate, all without monetary compensation. The Consensus Plan also subjects utility licensees to harmful levels of interference by requiring portions of their systems, including wide-area systems, to serve as guard bands in the 800 MHz band. Finally and without cause, the Consensus Plan denies Critical Infrastructure industries the right to seek much needed vacated spectrum for a period of five years.

Even putting aside the mistreatment of utilities in the Consensus Plan, the proposal itself suffers from the same flaws as those which precede it. Specifically, the plan ignores the underlying cause of interference in the 800 MHz band: incompatible technologies. Rather than seek to correct these incompatibilities through the provision of technical changes, the plan does little more than shift types of users--not technologies--to different portions of the band. A

questionable practice in the short term, the plan can provide no assurances that future technologies will fit into the dichotomy created.

Like the other proposals, the Consensus Plan calls for an expensive rebanding and relocation process. By all accounts, the cost of the plan will exceed its available funding. Because the plan fails to identify a single additional source of funding other than Nextel Communications, Inc., including its subsidiary, Nextel Partners, Inc., which stands to benefit handsomely from the plan, the Consensus Plan cannot guarantee that all public safety entities will receive the relief from interference they require.

Accordingly, Ameren Corporation urges the Commission to decline to adopt the Consensus Plan in its current form. If the Commission seeks to implement a true consensus, it should urge the parties who submitted the Consensus Plan to bring together representatives of all types, including Critical Infrastructure, to craft a plan that compensates all displaced parties and that promulgates technical rules to allow differing technologies to coexist in the 800 MHz band.

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Ameren Corporation (“Ameren”), by its counsel, and pursuant to the Commission’s Public Notices, DA 02-2202 and DA 02-2306, released September 6 and 17, 2002, respectively, hereby submits comments regarding the so-called “Consensus Plan” filed in the above-referenced proceeding.<sup>1</sup> Ameren commends the Commission for providing interested parties an additional opportunity to comment on this proposal, which was presented awkwardly as reply comments to this proceeding by seventeen parties.<sup>2</sup> Because the plan, like the proposals before it, ignores the underlying causes of interference in the band, fails to address the concerns of one of the largest classes of occupants in the band, utilities, and imposes considerable, uncompensated costs on this class, Ameren joins a long and growing list of parties who urge the Commission to reject the proposal, and in so doing, strip the plan of its “consensus” moniker.

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<sup>1</sup> Improving Public Safety Communications in the 800 MHz Band, *Notice of Proposed Rulemaking*, WT Docket No. 02-55 (rel. Mar. 15, 2002).

<sup>2</sup> Reply Comments of Aeronautical Radio, Inc., et al, WT Docket No. 02-55 (filed Aug. 7, 2002) [hereinafter the “Joint Proposal”].

## **I. The Joint Proposal Is A Consensus Plan Only In Name**

The reply comments filed on August 7, 2002, by a dozen or so parties do not a consensus make. Conspicuously absent as authors of the Joint Proposal are Nextel's competitors, Nextel's subsidiary Nextel Partners, Inc. ("Nextel Partners"), and all electric, natural gas, and water utilities. Combined, these excluded companies possess thousands of licenses in the 800 MHz band that would be affected by the Joint Proposal. Not surprisingly, because of the absence of these parties from the negotiations, the resulting Joint Proposal ignores their concerns while presenting them with a bill for a problem they did not create, and a solution they do not endorse.

### **A. No Commercial Wireless Entities, Save Nextel, Subscribe To The Joint Proposal**

The lynchpin of the entire Joint Proposal is the provision of funding for the relocation of displaced 800 MHz incumbents. Without the agreement and funding of commercial wireless interests other than Nextel, however, the Joint Proposal will have insufficient funds to carry out its own proposals. The Commission should be concerned, therefore, that no competitor of Nextel's, companies which Nextel claims will benefit from this plan, have joined the Joint Proposal.

Nextel has promised \$500 million in funding for the relocation or rebanding of public safety entities in the band.<sup>3</sup> Yet, by all accounts, the cost of this shift will surpass this funding. As discussed in more detail below, the Joint Proposal does not mandate complete funding, but leaves the provision of any additional funds to the discretion of Nextel.<sup>4</sup>

For the Joint Proposal to address all of the problems its sets out to correct, without a guarantee of *complete* funding from Nextel, additional funding would have to be located. The

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<sup>3</sup> Id. at 20.

<sup>4</sup> Id.

most obvious source of this funding, and one Nextel has hinted at tapping,<sup>5</sup> is Nextel's digital and wireless competitors, who would stand to gain some benefit from the realignment.<sup>6</sup> Yet, these parties have not joined the Joint Proposal and have, in fact, expressed their unwillingness to join in such a venture. As Verizon noted: "We are amazed that Nextel would have the gall to propose to leave the huge balance of the relocation bill to private mobile radio and cellular licenses, even though it is Nextel that is primarily responsible for the interference and Nextel that will benefit from the band realignment."<sup>7</sup>

### **B. Nextel Partners: A Silent Beneficiary Of The Joint Proposal**

The Commission should consider the extent to which the Joint Proposal benefits Nextel Partners. Oddly, for a company that stands to benefit from the Joint Proposal, Nextel Partners has been neither a commenting party in this proceeding nor a signatory to the plan.

Nextel owns 32.3 percent of Nextel Partners.<sup>8</sup> The relationship between the two parties is considerable and "was created to accelerate the build-out of the Nextel digital mobile network in the United States by granting [Nextel Partners] the exclusive right to offer wireless communications services under the Nextel brand in selected mid-sized and tertiary markets."<sup>9</sup> To that end, Nextel "contributed to [Nextel Partners] licenses and cash in exchange for an ownership stake in [the] company."<sup>10</sup> In fact, the two companies are so intertwined that if Nextel Partners does not offer the services and satisfy the performance standards required of it by

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<sup>5</sup> Comments of Nextel Communications Inc, WT Docket No. 02-55 (filed May 6, 2002) at 42-43 ("the Commission should require other commercial SMR providers and cellular licensees to make a similar [financial] commitment to funding relocation costs") [hereinafter "Nextel Comments"].

<sup>6</sup> Id. at 43 ("CMRS licensees will benefit significantly from a realignment of the 800 MHz band by being relieved of the burdens of addressing CMRS - public interest [sic] interference on an on going, *ad hoc* basis and having greater flexibility in operating their commercial networks").

<sup>7</sup> Comments of Verizon Wireless, WT Docket No. 02-55 (filed May 6, 2002) at 12.

<sup>8</sup> Nextel Partners, Inc., SEC Form 10-K: Annual Report for the Fiscal Year Ended Dec. 31, 2001, at 2.

<sup>9</sup> Id.

<sup>10</sup> Id. at 3.

Nextel, Nextel Partners notes that it “risk[s] termination of our agreements with Nextel [,] which would eliminate our ability to carry out our current business plan and strategy.”<sup>11</sup>

The interdependence of Nextel Partners and Nextel should raise a number of questions for the Commission. First, if, as it appears from Nextel’s comments in this proceeding,<sup>12</sup> Nextel Partners’ spectrum has been made part of the Joint Proposal, why hasn’t Nextel Partners joined this proposal? Second, and even assuming Nextel acted appropriately in offering Nextel Partner’s licenses as part of this band plan, why hasn’t Nextel Partners filed any comments in this proceeding if its spectrum is at stake?

Finally, the Commission should also question why Nextel Partners is not helping to fund a band realignment that will improve its financial position. Whatever benefit Nextel stands to gain from this proceeding, it will come at a considerable cost: \$500 million. Yet, Nextel Partners, which stands to gain the identical benefits of Nextel and which also enjoys over \$377 million in revenue due in large part to its relationship with its parent,<sup>13</sup> has not offered a cent towards the funding of the realignment of the 800 MHz band. The Commission should consider the meaning of the conspicuous absence of Nextel Partners as a party to the Joint Proposal, and to the proceeding in general.

### **C. There Can Be No Consensus Without Critical Infrastructure Input**

The most galling aspect of the Joint Proposal is its refusal to include electric, gas and water utilities in the negotiations. Ameren, like other members of the Critical Infrastructure industry, possesses dozens of licenses in the 800 MHz band that will be affected adversely by the

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<sup>11</sup> Id. at 23.

<sup>12</sup> See Nextel Comments at n.4 and Appendix A (describing the 800 MHz holdings of Nextel and Nextel Partners).

<sup>13</sup> Gary Bradford, “Technology Briefing Telecommunications: Nextel Partners Expects To Add Subscribers,” N.Y. Times (July 31, 2002), C4.

changes offered in the Joint Proposal. It is surprising, therefore, that ovations were not made to bring Ameren and other effected licensees to the bargaining table.

Worse still, the final product of those negotiations reflects the absence of utility input in the drafting process. Under the Joint Proposal, utilities and other B/ILT licensees would receive no compensation for the costs of rebanding, would be denied access to additional spectrum for five years, and only then if such spectrum is left from public safety entities, and would have portions of their networks used as guard bands. As discussed in more detail below, none of these features of the Joint Proposal is agreeable to Ameren.

Had utilities been offered a seat at the Joint Parties' table, the resulting proposal would not be that which is currently before the Commission. Accordingly, the Commission should not ponder long the notion that the Joint Proposal reflects a consensus of industries, of companies, or of licensees. It does not. Rather, it is merely a consensus of the limited number of parties invited to negotiate a self-serving proposal whose benefits flow to those parties while leaving the burden solely at the feet of those left uninvited.

## **II. Interference Is A Technical Problem Requiring A Technical Solution**

As Ameren and other commenting parties repeatedly have stated, rebanding and relocation of incumbent licensees alone will not solve the interference problems found in the 800 MHz band.<sup>14</sup> Interference in the 800 MHz band is the result of Commission Rules which permit incompatible technologies, not incompatible users, to operate within the same band. Therefore, it is no answer simply to shift types of users to one end of the band or the other. Not only will this solution likely fail in the short term, it will be no solution as new technologies enter the band.

Rather than follow a rebanding scheme such as that offered in the Joint Proposal, the Commission must establish technical rules, such as those outlined by Ameren in its Reply Comments, which seek to head off interference at its root. Only by establishing new technical standards can the Commission ensure that future systems and new technologies will remain compatible.

Ameren recognizes, of course, that alterations in the technical specifications may not solve all of the interference issues in the 800 MHz band. The same is true, however, of the rebanding plan offered in the Joint Proposal. Ameren submits that it would be far more prudent to attempt technical alterations in the band, which can be altered or amended as tests go forward, than to embark upon a lengthy and costly relocation plan which would be far more difficult to tweak if, as is likely, the shift does not end interference problems in the band.

### **III. The Joint Proposal Disadvantages Critical Infrastructure Industries**

Perhaps the clearest evidence of the fact that the “Consensus Plan,” does not reflect a consensus is the plan itself, which disadvantages utilities and other B/ILT licensees in a plethora of ways.

#### **A. The Joint Proposal’s Funding Mechanism Is Inadequate For Public Safety and Nonexistent For Critical Infrastructure**

The key feature of any rebanding or relocation proposal must be the compensation of incumbents for their costs incurred in rebanding or relocation. At first blush, the Joint Proposal appears to satisfy this requirement, noting that “incumbent licensees, including public safety, B/ILT and traditional SMR, should not bear the burden of relocation costs caused by the

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<sup>14</sup> Reply Comments of Ameren Corporation, WT Docket No. 02-55 (filed May 6, 2002) at 3, *citing* Comments of Motorola, Inc., WT Docket No. 02-55 (filed May 6, 2002) at 11 (“*rebanding alone will not likely eliminate the interference that CMRS systems are causing to public safety and B/ILT systems*”) (emphasis in original).

introduction of incompatible system architectures in the 800 MHz band.”<sup>15</sup> In fact, the Joint Proposal cannot guarantee full funding for public safety, and provides *no* funding to B/ILT and traditional SMR.

### ***1. Public Safety***

In a proceeding that was begun ostensibly to “Promot[e] Public Safety Communications,”<sup>16</sup> it is remarkable that the Joint Proposal fails to guarantee full funding for the relocation or rebanding of all public safety entities. This is because the “consensus” has been unable to identify a single competitor of Nextel’s who is willing to support such a plan either in writing or through additional funding. Thus, the Joint Proposal is left with only the original \$500 million offered by Nextel.

By all accounts, the Nextel fund will be insufficient to meet the costs of rebanding or relocating all public safety entities located in the 800 MHz band. Given this fact, the parties to the Joint Proposal are placed in a quandary. On one hand, they claim, “[n]o public safety agency [will be] required to move” unless all costs of conversion are covered by a third party.<sup>17</sup> On the other, their plan does not require Nextel to contribute any additional funding, leaving such funding to the “complete discretion” of Nextel, and leaving public safety entities without funds to correct the interference from which they suffer.<sup>18</sup> Hence, the entire plan rises and falls with the amount of funding that is available.

The Joint Parties claim that by leaving further funding to the discretion of Nextel, incentives will be created for both Nextel and public safety entities to work out such additional funding as required. Thus, the theory goes, if Nextel wants to improve its position in a given

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<sup>15</sup> Joint Proposal at 19.

<sup>16</sup> “Promoting Public Safety Communications,” Nextel Communications, Inc. (a “White Paper” filed with the Commission on Nov. 21, 2001).

<sup>17</sup> Joint Proposal at 20.

market, it will find it worth paying for the relocation of that market's incumbent public safety entities. But what will occur in markets where Nextel is not so inclined? Is the interference occurring in less commercially cost-effective markets not worth addressing? The Joint Proposal raises either the specter of Nextel spending its money to help public safety only in areas where Nextel finds it beneficial to do so, or public safety entities forfeiting considerable rights in a meager attempt to attract Nextel's investment. If the goal of this proceeding is to improve public safety communications, said improvement cannot be left to the corporate whims of Nextel. Public safety deserves better.

## **2. Critical Infrastructure**

So, too, do Ameren and other members of the nation's Critical Infrastructure. Under the Joint Proposal, B/ILT users receive no compensation for rebanding in the 800 MHz band. Rather, if those licensees are willing to move out of the band, they will be eligible for additional spectrum in their new band, 900 MHz.<sup>19</sup> Like rebanding, the cost of relocation also would not be covered.

Thus, the Joint Proposal asks B/ILT licensees to choose from the lesser of two evils: costly and unfunded rebanding, or more expensive and equally unfunded relocation with the opportunity to gain additional spectrum. Neither of these choices squares with Commission precedent, however, which establishes the right of incumbents to receive monetary compensation when required to relocate.<sup>20</sup> If the Commission is to take seriously the Joint Parties claim that

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<sup>18</sup> Id.

<sup>19</sup> Joint Proposal at 18. Ameren cautions the Commission that, should it agree with the two-for-one spectrum swap outlined in the Joint Proposal, it should also ensure that the 900 MHz band will be preserved for permanent and protected use by utility and other B/ILT users. It would be unfair to claim later that entities entering the 900 MHz band should be subjected to fees or the auctioning of their spectrum because they had not "paid" for such spectrum in the traditional sense. As noted throughout, such a shift would come at a great cost to utilities and, if required, must not be jeopardized.

<sup>20</sup> See Comments of Southern LINC, WT Docket No. 02-55 (filed May 6, 2002), at 36-37, *citing* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order*

B/ILT licensees “should not bear the burden of relocation costs caused by the introduction of incompatible system architectures in the 800 MHz band,” it should ask for assurances as to where such compensation for relocation costs will arise.

## **B. Utility Licenses Should Not Be Used As Guard Bands**

The Joint Proposal, like those plans which precede it, posits an ill-conceived idea to use certain B/ILT licensees as guard bands between the different portions of the 800 MHz band.<sup>21</sup> As Ameren noted in its Reply Comments, the purpose of guard bands is to allow non-essential licenses to operate in areas where they will not interfere with adjacent users and, more importantly, will not be harmed unduly by any interference received.<sup>22</sup> Such a status is unbefitting a public utility, whose licenses are used to assure the delivery of the nation’s lifeblood – electricity, natural gas and water – in all conditions and at all times.

This is especially true of wide-area systems, which are an integral part of a utility’s communications network. In a footnote, the Joint Proposal notes that such systems will not be used in the guard bands “[t]o the extent possible.”<sup>23</sup> Such a modifier, however, is unacceptable. Utility wide-area communications systems, which are used at such critical times as the correction of a natural gas leak and the restoration of power lines during a storm, cannot be subjected to the interference that exists in guard bands. In this regard, utility communications are no less vital

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*and Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6886, 6890 (1992); Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1510 (1995); Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *First Report and Order* and *Further Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949, 23955 (1998) (all requiring compensation of incumbents for relocation expenses).

<sup>21</sup> Joint Proposal at 9.

<sup>22</sup> Ameren Comments at 12.

<sup>23</sup> *Id.*, n.35.

than those of public safety entities.<sup>24</sup> Ameren urges the Commission to exclude utility licenses, especially wide-area, mission critical systems, from serving as guard bands.

**C. Utility Licensees Should Not Be Prohibited From Acquiring Vacated Spectrum For Five Years**

Ameren disagrees with the Joint Proposal's plan to preserve Nextel-vacated spectrum for use by public safety for five years beyond the date of surrender.<sup>25</sup> Ameren submits that this requirement is overbroad and, further, is damaging to members of the Critical Infrastructure industries who have an immediate need for additional spectrum in the 800 MHz band.

Although recognizing that many public safety entities require additional spectrum and respecting that public safety should be given some priority for such spectrum, Ameren fails to see the wisdom in mandating that such exclusivity should last for five years. Instead, Ameren suggests that a two year exclusive period would be appropriate.

The Telecommunications Act prohibits public safety entities from gaining certain frequencies in the 746 - 806 MHz band for a period "not less than 2 years" after an application is granted.<sup>26</sup> It would be consistent for the Commission, therefore, to provide public safety with the identical period of protection from other entities attempting to acquire other frequencies in the 800 MHz band.

A two-year protected period for public safety also would support the Commission's ongoing goal of efficient spectrum allocation. As should be clear to the Commission in this proceeding, public safety entities already are aware of their spectrum needs both now and in the foreseeable future. It makes little sense, therefore, to have wide swaths of spectrum sit idle after these entities have met their needs.

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<sup>24</sup> As was once noted elsewhere, a fire department cannot respond well to a fire unless a water utility has delivered water to a fire hydrant.

<sup>25</sup> Joint Proposal at v, 15.

Finally, the five year moratorium harms utilities, who have an unmet need for additional 800 MHz spectrum. In the future, and even anticipating the technical changes made to the Commission's Rules outlined herein, the problem of congestion in the 800 MHz band will worsen for Ameren and all other utilities as the number of users increases, and as those users increasingly rely on the finite spectrum for additional technologies and uses. Because of this congestion, by some estimates the utility industry will require 6.3 MHz of additional bandwidth by 2010.<sup>27</sup> Ameren's current operations desperately need additional spectrum and, moreover, its future business plans will require considerable amounts of additional spectrum as its telecommunications system is upgraded and modernized. Given these pressing needs, it makes little sense for the Commission to promulgate rules which would result in the warehousing of much needed spectrum.

#### **D. Short-Spaced Stations Must Not Be Grandfathered**

Many of the Nextel channels that would be vacated by the Joint Proposal are short-spaced to other, preexisting utility users, including Ameren. As a result of these short-spaced stations, Ameren has had difficulty in making needed modifications to its wide-area system. Ameren urges the Commission to return all Nextel-vacated channels to the original 70-mile spacing requirement. As such, new licensees would be allowed to short-space incumbent licensees only if permitted by the Commission's Short-Spacing Separation Table, through prior consent of the incumbent, or through Commission grant of a waiver to its Rules, whereby the incumbent is

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<sup>26</sup> 47 U.S.C. § 337(c)(1)(D).

<sup>27</sup> See Marshall W. Ross & Jeng F. Mao, "Current and Future Spectrum Use by the Energy, Water, and Railroad Industries: Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 Public Law 106-553," U.S. Department of Commerce, National Telecommunications and Information Administration (Jan. 30, 2002) at xxi (citing data provided by the Utility Spectrum Assessment Taskforce).

notified of the application for waiver and provided sufficient time in which to analyze the application and comment.<sup>28</sup>

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<sup>28</sup> 47 C.F.R. § 90.621.

#### IV. CONCLUSION

Like those that have come before it, the Joint Proposal is not a well conceived solution to the interference problems in the 800 MHz band. The plan lacks sufficient funding to reband public safety entities, and provides no such compensation to private wireless licensees like Ameren. Worse still, the Joint Proposal provides no guarantees that it will correct the problems in the band. Because of these and other shortcomings, the Joint Proposal is not endorsed by many of the largest occupants of the band. It is not, therefore, a Consensus Plan by any stretch of the imagination.

The Commission should realize that the problem in the band is one of conflicting technologies, not conflicting users. Accordingly, the Commission should first seek to remedy the problems through technical solutions and not through the costly, burdensome, and questionably effective juggling of users.

Respectfully submitted,

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